



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 11-05776
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2012

Decision

LYNCH, Noreen A., Administrative Judge:

On March 27, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated June 13, 2012.¹ Applicant received the FORM on June 20, 2012. He did not submit additional information. On September 6, 2012, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on September 7, 2012. Based on a review of the case file, I find

¹The Government submitted nine items in support of its case.

Applicant did not meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶ 1.a through ¶ 1o. (Item 4)

Applicant is 24 years old. He graduated from high school in 2005 and attended community college in 2008. He is married and has no children. (Item 5) Applicant has been employed with his current employer since October 2010. (Item 4) He completed his first security clearance application on October 28, 2010. (Item 5)

The SOR lists 15 delinquent debts that total approximately \$14,354. The credit reports confirm them. (Items 7, 8 and 9) Applicant noted that the accounts listed on the SOR were credit accounts that were opened in 2007 or 2008. They became delinquent in late 2008 or early 2009. Applicant did not provide any documentation that any of the debts have been paid or resolved. He presented a signed contract with a credit repair company, in which he agreed to pay \$175 initially, and \$100 per month for their services. The contract is dated February 13, 2012. There is no indication that the credit repair company negotiates a payment plan or assists Applicant with paying his debts. (Item 6)

Applicant accepted full responsibility for his delinquent debts, claiming that at the time he accumulated them, he was a few years younger and “more ignorant.” He stated that he is making efforts to amend his past mistakes and has gained a sense of value by “making good” on debts. He believes that a clearance will help him achieve success. He stated that he is a person of integrity and would not in any way fail to protect a national trust. He points to a recently opened secured line of credit as an example of rebuilding trust with a major credit company.

Applicant has a monthly net income of approximately \$3,205. After listing total monthly expenses of \$1,775 including his monthly payments on his car, he has a net monthly remainder of approximately \$1,430. He listed bank savings of \$320. (Item 6) Applicant listed a \$200 monthly payment of \$200 toward Credit Fix. (Item 6)

Applicant noted a period of unemployment from September 2010 until October 2010 and an earlier period of unemployment from April 2007 until August 2007. He received unemployment compensation and his spouse worked. (Item 6) He did not indicate how that impacted his ability to pay his delinquent debts.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible

rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." ⁵ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has delinquent debts amounting to \$14,354. His admissions and credit reports confirm these debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant's debts are recent and ongoing. He intends to pay his bills but he has not presented documentation concerning a consistent payment plan or course of action that confirms that his debts are being paid or resolved. The credit repair contract does not confirm the any debts have been paid or are being paid. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) does not apply. Applicant listed short periods of unemployment, but he has not provided any nexus to the delinquent debts. He did not present specific information to prove that the delinquencies were beyond his control. He opened accounts before and after his marriage, and almost immediately defaulted on payments. This mitigating condition does not apply.

⁷ *Id.*

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant did not produce any evidence that he is addressing the SOR debts through negotiation, consistent and regular payments plan, or pay-offs, despite Applicant's sizeable monthly net remainder. He did not present evidence that he received financial counseling which obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem. I do not find that there are clear indications that the problem is being resolved or is under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 24 years old. He has worked for his current employer since 2010. He has delinquent debts that are still unresolved. He did not produce documentation or evidence that he has resolved the remaining debts, or is in the process of resolving them. He has not sought financial counseling.

Applicant stated that while he takes full responsibility for his delinquent debts, he does not believe it is justified to judge him on a credit history that occurred as a young man. He stated that he is honest and learned a lesson. He is making an effort to mend his past mistakes. He believes that a clearance will help him achieve success. Finally, he stated that he is a person of integrity and would not in any way fail to protect a national trust.

Applicant submitted insufficient information or evidence to mitigate the security concerns raised in his case. Clearance is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a- 1.o:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge